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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,740	02/14/2002	Eugene Jarvis	3079.010	3485

51500 7590 04/22/2005

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EXAMINER

BROCKETTI, JULIE K

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

7p

Office Action Summary	Application No.	Applicant(s)	
	10/077,740	JARVIS ET AL.	
	Examiner	Art Unit	
	Julie K Brockett	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,6,8,10,11,13,14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6,8,10,11,13,14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 4, 2005 has been entered.

Claim Objections

Claim 13 is objected to because of the following informalities: the claim states in the last limitation "...wherein said proposition bet is selected to after said initial hand of cards is displayed." The word "to" needs to be deleted in order to be grammatically correct. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites the limitation "said proposition bet". There is insufficient antecedent basis for this limitation in the claim. The previous reference is to "a plurality of proposition bets". The Examiner requires consistency in the wording.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 6, 8, 10, 11, 13, 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carrico et al., U.S. Patent No. 6,416,407 B1 in view of by Yoseloff, U.S. Patent No. 6,227,969 B1. Carrico et al. discloses a method for playing a draw poker game on a video draw poker gaming machine, including initially dealt cards, an opportunity for the player to hold at least one of said initially dealt cards and a final hand composition. The gaming machine is a computing device and includes a microprocessor in communication with the screen display. A selection device is in communication with the microprocessor for providing means by which the player interacts with the computing device. A power supply is in electrical communication with the screen display. The microprocessor allows the game

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to perform the following steps (See Carrico col. 8 lines 24-65). A first wager is placed on whether a final hand composition will match one of a plurality of preselected combination of cards that are ranked in a particular order (See Carrico col. 4 lines 19-22). A hand of initially dealt cards is dealt to a player and displayed on the screen display (See Carrico Fig. 2; col. 4 lines 30-32). A card determining means is in communication with the computing device for randomly determining in succession the composition of the initial hand of cards and for randomly determining the final hand of cards (See Carrico col. 4 lines 30-55). It is then determined by the game and the player whether the initially dealt cards match one of the plurality of pre-selected combination of cards and a ranking is determined for the initially dealt cards. The player selects none, one or more held cards from said hand of dealt cards (See Carrico col. 5 lines 13-16). A second bet is offered after the initially dealt cards are dealt, that the final hand composition will match a particular one of the plurality of pre-selected combination of cards, unless all initially dealt cards are held. The particular one of the plurality of the pre-selected combination of cards is ranked higher than the ranking of the initially dealt cards (See Carrico col. 5 lines 1-59). One additional card is dealt to the player to replace each card not held in order to provide a final hand composition. (See Carrico col. 5 lines 17-22). It is then determined if the final hand matches one of the plurality of preselected combination of cards as to the first wager (See col. 5 lines 23-26). A card determining means is in communication with the

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computing device for determining in succession the composition of the initial hand of cards and for randomly determining the composition of the final hand of cards. The card determining means determines the composition of the final hand of cards and deals the cards needed to complete the hand so as to provide a payout to the player based on the composition of the final hand of cards (See Carrico col. 4 lines 33-67; col. 5) [claims 1, 6, 11, 13, 14]. The poker game is 5-card draw poker (See Carrico col. 2 lines 55-59) [claims 3, 8]. At a certain stage of the game, i.e. after an initial deal of cards and discards, the player is offered an additional wagering opportunity based on a possible final hand composition, only if the player decides not to hold all the initially dealt cards and it is not impossible to improve the poker hand ranking of the initially dealt cards [claims 1, 6]. The player must make a second wager for this opportunity. The held cards are automatically held upon acceptance of the second wager [claims 5, 10]. The plurality of pre-selected combination of cards comprises: Royal Flush, Straight Flush, Full House, Three of a Kind, Two Pair and One Pair (See Carrico col. 6 lines 30-60) [claim 17]. The machine automatically determines the player cards to hold when the player places the wager (See Carrico col. 5 lines 47-59) [claim 18]. Carrico lacks in disclosing this second betting opportunity as a proposition bet in which the outcome of the bet is determined separately from the initial wager and is placed after the initial hand of cards are dealt.

Yoseloff teaches of placing proposition bets in the game of poker after the initial hand of cards are dealt (See Yoseloff col. 4 lines 57-67; col. 6 lines 13-33) [claims 1, 6, 11, 13, 14]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the method of placing proposition bets in the game of poker after the initial cards are dealt in the invention of Carrico. By placing an additional bet as in the game of Carrico after the cards have been dealt but before the draw, a player can make an educated wager since they know what cards they already have and what cards they would need to draw in order to have a winning outcome. Furthermore, players enjoy the opportunity to win more than one wager, by using the prepositional betting system of Yoseloff in the invention of Carrico, players could still win their initial wager as well as their second wager instead of merely adding the second wager to the first in which case if a winning outcome does not occur with regards to the second wager, the player automatically loses his first wager too. Consequently, by using the method of Yoseloff, players have more enjoyment in the game since they have two chances of winning instead of just one. Furthermore, players would be more inclined to place an additional wager if they knew that they were not automatically forfeiting their first wager.

Response to Amendment

It has been noted that claims 1, 5, 6, 10, 11, 13, 14, 17 and 18 have been amended. Claims 2, 4, 7, 9, 12, 15 and 16 have been cancelled.

Response to Arguments

Applicant's arguments filed February 4, 2005 have been fully considered but they are not persuasive.

Applicant argues that there is not teaching in either of the cited patents to suggest placing any separate and independent bets that the outcome of the final hand composition will match one of the pre-selected combinations of cards that is of a higher ranking than the initially dealt cards, wherein the bets are placed after the initial deal but before the final hand composition. The Examiner agrees that no reference by itself teaches this limitation. However, the combination of Carrico and Yoseloff does teach this limitation. Carrico teaches of placing a second wager that the outcome of the final hand composition will match one of the pre-selected combinations of cards that is of a higher ranking than the initially dealt cards, wherein the bets are placed after the initial deal but before the final hand composition. However, this second wager does risk the player's first wager and is not a proposition bet. Nevertheless, proposition bets are well known in the art and can be made after the initial deal of cards as seen from Yoseloff. Therefore, one would be motivated to combine the concept of a proposition bet placed after an initial

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deal of cards with Carrico so that players have an additional chance to win a bet and win more prizes.

Applicant argues that the combination of Yoseloff and Carrico are not obvious since no one in industry has developed the combination and furthermore, the combination teaches away from combining the references. While this may be true that no one in the industry has developed the combination, it does not mean that it is not obvious to do so. Proposition bets have been well known throughout the art for many years and it is obvious to place them after the cards are dealt so that the player can make an educated wager for the bet based on the cards they already have. This is common knowledge in the art, in that the player would want to have as many facts concerning the possible outcomes prior to placing a bet. Applicant points to Yoseloff, which states that the side bet wager is preferably done in five-card draw after the player's hand has been fixed. However, it is not saying that it can't be done. It is certainly feasible that the bet could be placed prior to the hand being fixed so that player's have an idea of what types of hands they may achieve. Common knowledge in the art says that the player wants every advantage in the game, and by betting before the hand is fixed provides the player with this advantage.

The Examiner points out that Yoseloff is used solely to illustrate that proposition bets are well known in the art and that they can be made after the

cards have been dealt and prior to a final hand of cards. Carrico is being used to show all of the other limitations.


In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 571-272-4432. The examiner can normally be reached on M-Th 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie K Brockett
Primary Examiner
Art Unit 3713